

California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. 01-42

Authorizing the Executive Officer to Enter into a Settlement Agreement
with the County of San Bernardino Solid Waste Management Division
for San Timoteo Landfill

WHEREAS, the California Regional Water Quality Control Board (RWQCB), Santa Ana Region (hereinafter Board), finds that:

1. The County of San Bernardino (hereinafter County) owns and operates the San Timoteo Sanitary Landfill located in the City of Redlands. Norcal/San Bernardino, Inc. (hereinafter Norcal), conducts the day-to-day operations and maintenance of the Landfill for the County.
2. Landfill operations at San Timoteo Landfill are currently regulated by Waste Discharge Requirements, Order No. 78-151, adopted by the Board on July 14, 1978, and amended by Order No. 98-99 on November 20, 1998.
3. On April 11, 2000, Board staff determined that protocols for the screening, placement and construction quality assurance (CQA) of the operations layer on the Unit 2 side slopes at San Timoteo Landfill were not in compliance with the approved design report and CQA plan.
4. In an August 2, 2000 letter, Board staff notified the County that because proper CQA was not implemented for construction of the operations layer on the Unit 2 side slopes, Board staff were unable to certify the Unit 2 side slope liner system at San Timoteo Sanitary Landfill in accordance with Title 27, §20323 and §20324. Therefore, the letter directed the County to immediately cease all disposal activities at the Unit 2 side slopes.
5. On January 19, 2001, the Board adopted Cease and Desist Order No. 01-22, which requires the County to perform all necessary corrective actions to comply with the approved design report and CQA plan by February 20, 2001.
6. The County has indicated that it does not intend to comply with Cease and Desist Order No. 01-22 due to the high costs of the required corrective action (approximately \$1.7 million). Therefore, the Board, during its January 19, 2001 meeting, also adopted Order No. 01-24. If the County fails to comply with CDO No. 01-22, Order No. 01-24 directs the Executive Officer to issue a complaint on March 12, 2001 assessing administrative civil liability in the amount of \$200,000.00 pursuant to Section 13323 of the California Water Code.
7. The County and the Board recognize that it is in the public interest to avoid a prolonged dispute and to resolve this issue through a settlement agreement. Such an agreement has been prepared and is attached as Attachment "A", which is hereby made a part of this resolution.

8. The settlement agreement outlines the authorities and responsibilities of each party entering into this agreement.
9. The Board has notified the County and other interested parties of its intent to adopt this resolution.
10. The Board, at a public hearing held on March 2, 2001, considered all relevant information pertaining to this resolution.
11. This resolution is being adopted as part of an existing enforcement action for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

THEREFORE, BE IT RESOLVED that the California Regional Water Quality Control Board, Santa Ana Region:

Authorizes the Executive Officer to enter into a settlement agreement with the County in regards to a pending enforcement action against the County, as stipulated in Cease and Desist Order No. 01-22 and Order No. 01-24, for San Timoteo Sanitary Landfill, San Bernardino County.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 2, 2001.

Gerard J. Thibeault
Executive Officer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement"; or "Agreement") is entered into this 12th day of March, 2001, by and between the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") and the County of San Bernardino ("County"), with reference to the following facts and intentions.

RECITALS.

- A. The Regional Board adopted Cease and Desist Order No. 01-22 ("Complaint") against the County on January 19, 2001. The order finds that for a portion of the side slope of Cell 2, Phase 1 of the San Timoteo Landfill, the County failed to adhere to the Construction Quality Assurance ("CQA") standards required for placement of the operational layer of soil on top of the composite liner as required in the site Waste Discharge Requirements (Regional Board Order No. 98-99; "WDRs"). The Order requires the County to correct the failure to comply with CQA standards by February 20, 2001.
- B. The Regional Board also adopted Order No. 01-24 pursuant to Water Code Section 13308 directing the Executive Officer to issue a complaint for Administrative Civil Liability on March 12, 2001 in the amount of \$10,000 for each day that the Cease and Desist Order is violated.
- C. An engineering analysis and risk assessment, entitled "COMPARATIVE LEAKAGE AND ATTENUATION ANALYSIS CELL 2, PHASE 1, SLOPE 1, SAN TIMOTEO SANITARY LANDILL, SAN BERNARDINO COUNTY, CALIFORNIA " dated December 19, 2001 ("Risk Assessment"), indicates that there will be no measurable increase in risk to the waters of the State as a result of the County's failure to comply with CQA standards.
- D. The Regional Board does not contest the conclusions of the Risk Assessment and therefore will allow the County to continue to place waste at the San Timoteo Landfill within the area contained by the Unit 2, Phase1 slope liner.
- E. However, notwithstanding the Risk Assessment, the Regional Board and the County each take very seriously the County's failure to adhere to the CQA standards. Therefore, the Regional Board will impose, and the County agrees to pay, an assessment of \$200,000 for the County's failure to adhere to the CQA standards in violation of the cease and desist order. Further, the County recognizes the importance of, and hereby warrants that it will adhere to, all of the site WDRs, including the CQA standards for placement of all operational layers of soil that will be in direct contact with the FML on top of all composite liners now constructed or to be constructed in the future.

- F. The parties have entered into this Settlement Agreement to avoid a prolonged dispute and to further the public interest.
- G. The County and the Regional Board have agreed that it is in the public interest to enter into this Settlement Agreement without a public hearing before the Regional Board. This Settlement Agreement is not, and shall not be treated as, an admission of liability by any party for any purpose.

NOW THEREFORE, in consideration of the forgoing Recitals and the following terms and conditions, the parties agree as follows:

1. Incorporation of Recitals. The forgoing Recitals are hereby incorporated as though fully set forth.
2. Imposition and Payment of Fine. The Regional Board shall impose administrative civil liability pursuant to Order No. 01-24 in the amount of \$200,000 as a result of the County's failure to comply with the terms of the Cease and Desist Order.

The County hereby agrees to pay the \$200,000 assessment. The County agrees to deliver to the Regional Board's offices a \$200,000 check payable to the State Water Resources Control Board within 10 working days of the date this Agreement has been executed by all parties.

3. Release. Upon payment of the \$200,000 by the County, the Regional Board agrees to seek no further administrative civil liability nor will it pursue a judicial civil liability recovery against the County or its officers, directors, employees, or agents for violations of Cease and Desist Order No. 01-22.

If the County fails to pay the \$200,000, the Regional Board may collect any amounts owing pursuant to the California Water Code or refer the matter to the California Attorney General for collection with interest and costs.

4. Advice and Understanding. Each party represents and warrants that, in executing this Agreement, each has been advised by and has relied upon independent legal counsel, and that the terms of this Agreement and its consequences have been completely explained by said counsel, and that each party has read and fully understands the terms of this Agreement.
5. Conditions of Execution. Each party acknowledges and warrants that its execution of this Agreement is free and voluntary. Furthermore, it is understood and specifically acknowledged by each party, that this Agreement is made without reliance upon any statement or representation of any other party not incorporated in this Agreement. It is further understood and acknowledged by each party, that this Agreement is a compromise and settlement of disputed

claims and in no way constitutes an admission by the County of any fault or liability.

6. Authority. The individuals executing this Agreement represent and warrant that they have the authority to enter into this Agreement and to perform all actions required by this Agreement, and that the consent, approval or execution of or by any third party is not required to legally bind either party to the terms and conditions of this Agreement.
7. Construction. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party, as each party has participated in the drafting of this document and has had the opportunity to have its counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.
8. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective legal representatives, successors and assigns.
9. Governing Law. The validity and interpretation of this Agreement shall be governed by the laws of the State of California.
10. Severability. If any term, provision, covenant or condition of this Agreement is determined to be unenforceable by a Court of competent jurisdiction, it is the parties' intent that the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated by such a determination unless the invalidated provision materially alters the value of the consideration provided.
11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. This Agreement may be effectuated by facsimile signature.
12. Waiver. The waiver of any breach of any provision of this Agreement by any party to this Agreement shall not be deemed to be a waiver of any proceeding or subsequent breach under the Agreement, nor shall any waiver constitute continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
13. Entire Agreement and Amendment. This Agreement contains the entire understanding and agreement of the parties and there have been no binding promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature except as stated in this Agreement. Except for the authority provided to the Executive Officer and the

Contract Administrator to execute this Agreement, this Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year set forth below.

COUNTY OF SAN BERNARDINO

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
SANTA ANA REGION

By _____
Gerry Newcombe
Contract Administrator

By _____
Gerard J. Thibeault
Executive Officer

Dated: _____

Dated: _____

California Regional Water Quality Control Board
Santa Ana Region

March 2, 2001

STAFF REPORT

ITEM: 7

SUBJECT: Resolution No. 01-42, authorizing the Executive Officer to Enter into a Settlement Agreement with the County of San Bernardino Solid Waste Management Division for San Timoteo Sanitary Landfill, San Bernardino County

DISCUSSION:

The County of San Bernardino (hereinafter County) owns and operates the San Timoteo Sanitary Landfill located in the City of Redlands. Norcal/San Bernardino, Inc. (hereinafter Norcal), conducts the day-to-day operations and maintenance of the Landfill for the County.

On January 19, 2001, the Board adopted Cease and Desist Order (CDO) No. 01-22 and Order No. 01-24. Order No. 01-22 requires the County to perform all necessary corrective actions to comply with the approved design report and Construction Quality Assurance (CQA) plan by February 20, 2001. The County has indicated that it does not intend to comply with CDO No. 01-22 due to the high costs of the required corrective actions (approximately \$1.7 million). An engineering analysis and risk assessment prepared for the County indicates that there will be no measurable increase in risk to the waters of the State as a result of County's failure to comply with CQA standards. Notwithstanding this assessment, the County knowingly violated CQA standards and realized cost savings as a result of the violation. Therefore, the Board adopted Order No. 01-24 directing the Executive Officer to issue a complaint on March 12, 2001, assessing administrative civil liability (ACL) in the amount of \$200,000.00 pursuant to Section 13323 of the California Water Code if the County failed to comply with CDO No. 01-22.

The County and the Board staff recognize that it is in the public interest to resolve this issue through a settlement agreement. Such an agreement has been prepared and is attached to Resolution No. 01-42 as Attachment "A". This resolution authorizes the Executive Officer to enter into a settlement agreement (included as Attachment "A" to the resolution) with the County. The settlement agreement establishes that the County will pay the amount assessed in the ACL, and the Board will not pursue any other enforcement action related to this violation.

RECOMMENDATION:

Adopt Resolution No. 01-42 as presented.